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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-386*

13 **SUSAN JANE SHEEDY**
P.O. Box 15095
Newport Beach, CA 92659

A C C U S A T I O N

14 Registered Nurse License No. 383824
15 Nurse Practitioner Certificate No. 6910
16 Nurse Practitioner Furnishing Certificate No.
6910

Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs (Board).

23 2. On March 31, 1985, the Board issued Registered Nurse License Number 383824 to
24 Respondent Susan Jane Sheedy. The Registered Nurse License was in full force and effect at all
25 times relevant to the charges brought herein, and will expire on July 31, 2014, unless renewed.

26 3. On February 18, 1994, the Board issued Nurse Practitioner (NP) Certificate Number
27 6910 to Respondent. The NP Certificate was in full force and effect at all times relevant to the
28 charges brought herein, and will expire on July 31, 2014, unless renewed.

4. On July 17, 1995, the Board issued Nurse Practitioner Furnishing (NPF) Certificate Number 6910 to Respondent. The NPF Certificate was in full force and effect at all times relevant to the charges brought herein, and will expire on July 31, 2014, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

6. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

8. Section 2052 of the Code states in pertinent part

(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

• • • •

(c) The remedy provided in this section shall not preclude any other remedy provided by law.

7. Section 2053.5 of the Code states in pertinent part:

(a) Notwithstanding any other provision of law, a person who complies

1 with the requirements of Section 2053.6 shall not be in violation of Section 2051 or
2 2052 unless that person does any of the following:

3 (1) Conducts surgery or any other procedure on another person that
4 punctures the skin or harmfully invades the body.

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6 8. Section 2725 of the Code states in pertinent part:

7 (a) In amending this section at the 1973-74 session, the Legislature
8 recognizes that nursing is a dynamic field, the practice of which is continually
9 evolving to include more sophisticated patient care activities. It is the intent of the
10 Legislature in amending this section at the 1973-74 session to provide clear legal
11 authority for functions and procedures that have common acceptance and usage. It is
12 the legislative intent also to recognize the existence of overlapping functions between
13 physicians and registered nurses and to permit additional sharing of functions within
14 organized health care systems that provide for collaboration between physicians and
15 registered nurses. These organized health care systems include, but are not limited to,
16 health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of
17 Division 2 of the Health and Safety Code, clinics, home health agencies, physicians'
18 offices, and public or community health services. . . .

19 (b) The practice of nursing within the meaning of this chapter means
20 those functions, including basic health care, that help people cope with difficulties in
21 daily living that are associated with their actual or potential health or illness problems
22 or the treatment thereof, and that require a substantial amount of scientific knowledge
23 or technical skill, including all of the following:

24

25 (2) Direct and indirect patient care services, including, but not limited to,
26 the administration of medications and therapeutic agents, necessary to implement a
27 treatment, disease prevention, or rehabilitative regimen ordered by and within the
28 scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as
defined by Section 1316.5 of the Health and Safety Code.

. . . .

(4) Observation of signs and symptoms of illness, reactions to treatment,
general behavior, or general physical condition, and (A) determination of whether the
signs, symptoms, reactions, behavior, or general appearance exhibit abnormal
characteristics, and (B) implementation, based on observed abnormalities, of
appropriate reporting, or referral, or standardized procedures, or changes in treatment
regimen in accordance with standardized procedures, or the initiation of emergency
procedures.

. . . .

9. Section 2725.1 of the Code states, in pertinent part:

Notwithstanding any other provision of law, a registered nurse may
dispense drugs or devices upon an order by a licensed physician and surgeon if the
nurse is functioning within a licensed clinic as defined in paragraphs (1) and (2) of

subdivision (a) of Section 1204 of, or within a clinic as defined in subdivision (b) or (c) of Section 1206, of the Health and Safety Code.

No clinic shall employ a registered nurse to perform dispensing duties exclusively. No registered nurse shall dispense drugs in a pharmacy, keep a pharmacy, open shop, or drugstore for the retailing of drugs or poisons. No registered nurse shall compound drugs. Dispensing of drugs by a registered nurse, except a certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51 or a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, shall not include substances included in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code). Nothing in this section shall exempt a clinic from the provisions of Article 13 (commencing with Section 4180) of Chapter 9.

....

(2) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code.

....

10. Section 2726 of the Code states, "Except as otherwise provided herein, this chapter confers no authority to practice medicine or surgery."

11. Section 2761 of the Code states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence or gross negligence in carrying out usual certified or licensed nursing functions.

....

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

....

(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of, or arranging for, a violation of any of the provisions of Article 12 (commencing with Section 2220) of Chapter 5.

....

12. Section 2762 of the Code states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

....

REGULATORY PROVISIONS

13. California Code of Regulations, title 16, (Regulations) section 1442, states:

As used in Section 2761 of the code, "gross negligence" includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

14. Regulations section 1443, states:

As used in Section 2761 of the code, "incompetence" means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

15. Regulations section 1443.5, states:

A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.

COST RECOVERY

16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

17. Code section 4022 states as follows:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ,II "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

18. Botox is a dangerous drug that can be dispensed only upon a prescription, as defined by and pursuant to Code section 4022. Botox (*Botulinum* Toxin Type A) - Botox Cosmetic is a purified protein produced by the *Clostridium botulinum* bacterium, which reduces the activity of the muscles that cause frown lines between the brows to form over time when injected under the skin.

19. Restylane is a dangerous drug that can be dispensed only upon a prescription, as defined by and pursuant to Code section 4022. Restylane is composed of non-animal stabilized hyaluronic acid, a substance found naturally in the human body. Restylane is injected using a fine needle into the dermis below the wrinkle and lifts the wrinkle out to the desired correction.

FACTS

20. On March 24, 2011, the Board received a complaint from the Board of Barbering and Cosmetology (BBC) alleging that a prior BBC inspection of Salon Zinnia, a beauty salon located in San Clemente, owned by individuals who are not physicians licensed to practice medicine in California, revealed that Botox procedures were being performed illegally at that salon. Salon Zinnia advertises for monthly "Med Spa" days and lists Respondent as providing Botox and Restylane treatments, but mentions no physician. A search of the Medical Board of California fictitious name permits list revealed that no physician is affiliated with Salon Zinnia.

21. Salon Zinnia's advertisement for its July 15, 2011 Med Spa Day states:

Photorejuvenation Facials, Restylane Fillers and Botox. The cost is \$9 per unit for Botox. We are offering comfortable and effective photofacials for the treatment of sun damage and other pigmentation on the face as well as Botox and filler by our favorite Certified Medical Aesthetic Specialist, Susan Sheedy, RN, CNP.

22. Salon Zinnia's advertisements for its October 22, and November 19, 2011 Med Spa Days state:

Susan Sheedy, RN, CNP is our favorite Certified Medical Aesthetic Specialist. We are offering comfortable and effective photofacials for the treatment of sun damage and other pigmentation on the face as well as Botox and fillers.

23. On November 15, 2011, the Board's investigator visited Salon Zinnia and interviewed its owners, who confirmed their joint ownership of the salon, that no physician has any ownership in it, and that Respondent does provide Botox injections to clients on a monthly basis in the salon's esthetician room, but that Botox is not stored at their salon.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Practicing Medicine Without a License)

24. Respondent is subject to disciplinary action under Code section 2761, subsections (a) and (d) in that by prescribing and administering Botox and Restylane, dangerous drugs as defined in Code section 4022, and by injecting cosmetic fillers into patients, she engaged in the unlicensed practice of medicine, by treating patients without proper direction by a physician, and without prescriptions for the dangerous drugs she injects, as prohibited by Code sections 2052, 2053.5, subsection (1), 2725, 2726, and 2725.1, as detailed in paragraphs 20 through 23.

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SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Aiding and Abetting Unauthorized Practice of Medicine)

29. Respondent is subject to disciplinary action under Code section 2762, subsections (a) and (i), in that she aided and abetted the unauthorized practice of medicine by participating in and cooperating with Salon Zinnia in advertising for and procuring clients to whom she prescribed, administered or furnished Botox and Restylane, dangerous drugs, as defined in Code section 4022, without an order therefor from a licensed physician, as detailed in paragraphs 20 through 23.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 383824, issued to Susan Jane Sheedy;

2. Revoking or suspending Registered Nurse Practitioner Certificate Number 6910, issued to Susan Jane Sheedy;


3. Revoking or suspending Registered Nurse Practitioner Furnishing Certificate Number 6910, issued to Susan Jane Sheedy;

4. Ordering Susan Jane Sheedy to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: November 9, 2012

SD2012704490

fw 
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant